Supreme Court, U.S.
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In The

Supreme Court of the United States

NED BARRIE MAJORS,

Petitioner,

v.

STATE BAR OF GEORGIA,

Respondent.

On Petition For Writ Of *Certiorari*
To The Georgia Supreme Court

PETITION FOR A WRIT OF *CERTIORARI*

NED BARRIE MAJORS
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October 28, 2003

85 pp

QUESTIONS PRESENTED

No Georgia lawyer has ever been disbarred for merely commingling funds in his trust (IOLTA) account when no client suffered any loss or dislocation, and in fact numerous Georgia lawyers have not been disbarred when they utilized their clients' trust funds for their own purposes over a temporary period of time but repaid or promised to repay the funds (although petitioner **never** utilized client or fiduciary trust funds for his own purposes); the questions are:

1. By "unexpected[ly] and indefensibl[y]" (*Rogers v. Tennessee*, 532 U.S. 451 (2001)) disbarring Majors, did Georgia deny to Majors Due Process of Law under the Fourteenth Amendment to the United States Constitution?
2. By disbarring Majors who had relocated to the State of South Carolina from the State of Georgia, did Georgia deny to Majors (a) his Privileges or Immunities under the Fourteenth Amendment or under Art. IV, Sec. 2; or (b) his rights under the dormant commerce clause and to Equal Protection under the Fourteenth Amendment?
3. By allowing the State Bar to call Majors as a witness at a hearing at which the bar had represented to the Special Master that it would not call any witnesses, upon which notification Majors had cancelled his own attorney's appearance, did Georgia deny to Majors Due Process of Law under the Fourteenth Amendment?

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PETITION FOR WRIT OF *CERTIORARI*

COMES NOW the petitioner NED BARRIE MAJORS and requests this Court to grant his petition for writ of *certiorari* because he has been disbarred by a GA Supreme Court that changed GA law "unexpectedly and indefensibly" to his detriment and did so in an effort to penalize his leaving GA in order to relocate to SC and join his wife & multi-handicapped daughter.

OPINIONS BELOW AND JURISDICTION

The GA disbarment order, *In re Majors*, was entered July 10, 2003 (1a), and is reported at 276 Ga. 878, 583 S.E.2d 893 (2003). The court denied Majors' motion for reconsideration on July 30, 2003 (31a), and denied his Motion for Leave to File a Second Motion for Reconsideration on Sept. 5, 2003 (32a). This petition for writ of *certiorari* is filed on or before Oct. 28, 2003, within 90 days of the denial of his first motion for reconsideration. It is therefore timely, and this Court has jurisdiction under 28 U.S.C. 1257.

Majors contended that the State Bar of GA ("bar") denied Due Process of Law in violation of the 14th Amdt. to the U.S. Const. (33a) in Respondent's Exceptions to Special Master's Report (p. 24, 28), filed Sept., 2002, and thereafter, and that the bar and the GA court violated the Privileges and Immunities Cl. of Art. IV, Sec. 2 (33a), the Privileges or Immunities Cl. of the 14th Amdt., the Equal Protection and Due Process clauses of the 14th Amdt., and the Commerce Cl. (33a) in his Motion for Leave to File Second Reconsideration Motion that was denied on the merits on Sept. 5, 2003.

CONST. PROVISIONS, BAR RULES INVOLVED

The constitutional provisions involved are stated immediately above and are found at 33a. The GA Bar Rules are Standards 30 (at 35a), & 65 (37a, 41a).

STATEMENT OF CASE

Majors and Lynn G. Featherly had an intimate personal relationship that began in 1988. Together they devised a business of purchasing delinquent, *ad valorem* real property tax liens from county governments. With a cashier's check from a "client," made payable to a county government, Majors or Featherly would deliver the check to a government official and purchase tax lien(s) in the name of the client. The government would issue a certificate to the remitter of the cashier's check, *i.e.*, the client, identifying the tax lien purchased by the client. For attending government sales of delinquent tax liens and purchasing tax liens in the name of a client, Majors and Featherly would receive an agency-for-hire fee, payable in advance, plus an inchoate interest of 50 percent of the net gain in any tax lien certificate that should mature into a property deed after the property is sold.

Usually the owner of the real property would redeem the tax lien by paying to the county government the amount of the delinquent tax, plus accrued interest. Having already received the delinquent tax payment from the client, the government would remit all of these funds to the client. In some cases, an owner would not redeem the property and after a lapse of time the government would issue a tax deed to the client. By prearranged agreement, Majors and Featherly would then, at the client's direction, seek professionals for the client to quiet title and sell the real property. If successful, the client would recover the cost of the tax lien and the remaining sales proceeds would be split 50 percent to the client and 50 percent to Majors and Featherly.

Their business grew and at their request, the GA Secretary of State incorporated Tax Lien Acquisitions, Inc. ("TLA") as a for-profit corporation in Jan. 1992. Each took 50 percent of the corporate stock, and each became a director of the two-person board of directors. Majors was elected Chief Executive Officer, Secretary, and Registered Agent for Service of Process. Featherly was elected President and Chair of the Board of Directors. No other person had a stock ownership interest, a corporate office, a directorship, or other interest in TLA.

In May 1993, Majors became a member of the bar. Shortly thereafter, the board named him "Chief Legal Counsel," and he occasionally wrote letters to TLA clients, but TLA was never involved in litigation. Majors did hang out a shingle at TLA's corporate headquarters, 205 Market Street, Roswell, GA, but strictly speaking he never practiced law. He assisted *without charge* two of his children to obtain uncontested divorces and one friend to resolve an uncontested child support matter. Thus at all times Majors was inexperienced in the practice of law, but he made a mistake of referring to TLA's clients, as his clients, although they were never clients of his law practice.[1]

In Oct. 1997, Majors met SC attorney Patricia Ferguson and in Mar. 1998, married her. He then moved into her SC home. He kept his shingle at TLA's head office at 205 Market Street, Roswell, GA, although

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[1] Representing himself *pro se* in defense of bar charges, Majors made the mistake of referring to TLA's clients as his clients. After he obtained the representation of GA attorney Spence, Majors sought to withdraw his misspoken admissions. The Review Panel ultimately denied this motion, and the GA court ignored this error in Majors' exceptions to the Review Panel's recommendation.

he established a branch office for TLA in Myrtle Beach, SC. Majors did not practice law in GA or SC.

At a tax lien sale not long after his admission to the bar, Majors tendered to a government official about one million dollars in cashier's checks from TLA clients. A weather storm cancelled the proceedings. Not long thereafter, without his knowledge or approval, the government issued to Majors personally a check in refund of all sums deposited on behalf of TLA clients. In order to protect these clients of TLA, Majors determined that he should not simply deposit the check in TLA's business account where it could be garnished, or lost, and instead he established an IOLTA bank account, entitled, "Attorney Ned Majors Trust FOB Tax Liens." At all times, Majors administered this account to the complete satisfaction of TLA's clients and maintained scrupulous records on his computer. Subsequently, Majors used this account to safeguard funds of TLA clients.

Majors' marriage to Ferguson caused him severe personal and business problems with Featherly. Indeed, the business relationship between Majors and Featherly disintegrated. Because it had two 50 percent shareholders who could not agree, the corporation deadlocked on all decisions.

TLA's office manager told Majors that Featherly was embezzling TLA's assets. After investigation, on Dec. 7, 1998, Majors personally delivered to Featherly copy of a complaint for equitable distribution of TLA's assets, entitled *Majors v. Featherly & TLA*.[2] The Fulton County Superior Court clerk refused to file the complaint or schedule a hearing for a temporary

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[2] C.A.F.N. 1998-CV-03450, Superior Court of Fulton County, GA, filed Dec. 23, 1998, was assigned to Hon. Constance Russell.

restraining order until Majors served TLA.[3] Majors was TLA's Registered Agent. Under Ga.Code Ann. 14-2-504(b), in the absence of a registered agent, a domestic corporation may be served by service upon its secretary. Majors noted that if he should resign as Registered Agent, the deadlocked corporation could not appoint a successor. In that event, as Secretary, he was the default designate to receive service. Because he believed that GA law required that he be served on behalf of TLA in one of his corporate capacities, Majors served himself as Registered Agent, stating as his address, "TLA, 205 Market Street, Roswell, GA," which was the office address of his "law office." In other words, he signed as Registered Agent in SC and used his GA address, rather than driving from Myrtle Beach, SC to Roswell, GA (a distance of 350 miles) to hand himself a copy of the lawsuit and sign the acknowledgment in GA.[4] Thereafter, Majors did **not** file an entry of appearance for TLA or any other paper on its behalf.

Featherly, who was personally served by Majors, hired GA attorney Clifford H. Hardwick to represent herself and purported to hire him to represent TLA although it was deadlocked. Hardwick devised a hardball defense. On Featherly's behalf (a) Hardwick filed a counterclaim that Majors had wasted corporate assets, and (b) Hardwick, for a 40 percent contingency fee from Featherly,[5] filed a petition for divorce whereby Featherly sought a divorce from

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[3] Indeed, under GA law, a corporation is a necessary party to such litigation. *Kilburn v. Young*, 536 S.E.2d 769 (Ga.App. 2000).

[4] Effective the next year, Ga. Code Ann. 14-2-501 permitted non-individuals (*e.g.*, corporations) to serve as registered agents.

[5] The bar declined to press any charges against Hardwick for this egregious infraction of bar rules.

Majors claiming they had entered into a common-law marriage in 1988,[6] even though both Hardwick and Featherly knew that Majors had been ceremonially married to Ferguson for almost a year. In response to the divorce petition, Majors moved for summary judgment which was granted. The GA court refused review. In *Majors v. Featherly & TLA*, on TLA's behalf, Hardwick filed an answer claiming that Majors had converted TLA assets. In response, Majors moved to disqualify Hardwick as TLA's counsel for having a conflict of interest with his representation of Featherly whom Majors had sued for embezzling from TLA. Majors' motion was granted, and Hardwick was disqualified from representing TLA. In Jan. 2002, a jury found for Majors on Featherly's counterclaims against him, and vice versa. No judgment was entered on that verdict and the case remains pending on TLA's claims against Majors, scheduled for trial, Oct. 31, 2003.

Also part of a callous defense, Hardwick filed a bar grievance against Majors. At no other time has Majors been the subject of a grievance or disciplinary action. The bar issued a Formal Complaint served May 17, 2000. The complaint charged Majors with a violation of Standards 4, 30, 65(A), and 65(D).[7] After he answered it *pro se*, both Majors and the bar served cross motions for summary judgment. The special master appointed by the GA court scheduled an evidentiary

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[6] C.A.F.N. 1999-CV-05182, Superior Court of Fulton County, GA, filed Feb. 16, 1999, and was assigned to Hon. Cynthia Wright.

[7] These standards were in effect until Dec. 31, 2000. On Jan. 1, 2001, the Rules of Professional Conduct previously adopted by the GA court became effective. The Standards charged are set forth in the argument or in the Appendix. Other standards - violated by attorneys in other cases cited in this petition -- are also set forth in the Appendix, beginning at 34a.

hearing on July 11, 2002. However, after being advised by the State Bar that it would not put up any testimony, the special master notified Majors of this fact. Majors then told the special master that because the bar would not adduce any evidence, he (Majors) would not put up any testimony. Thus the hearing was converted to oral argument on the cross motions. Accordingly, Majors excused his attorney, Henry M. Quillian III, who was scheduled to appear and testify for Majors. Majors then appeared without counsel at the hearing. Unexpectedly and by surprise and devious stratagem, the bar called Majors to the stand, and the special master permitted the bar to cross examine Majors. Both the special master and the bar acknowledged the procedure was "unusual." Also Majors' tender of a computer printout of his IOLTA account, with every account balanced, was rejected.

On Aug. 28, 2002, the special master entered a report noting Majors' SC residence, finding Majors to have violated Standards 4, 30, 65(A), and 65(D), and recommending that he be disbarred (4a). Majors then hired GA attorney James E. Spence, Jr. who filed a motion to withdraw admissions made by Majors at the July 11, 2002 hearing (and before) and a motion for new trial. The special master, even though he found that he lacked subject-matter jurisdiction, denied the two motions by order of Nov. 4, 2002 (18a). Majors timely filed exceptions to the special master's report, and the case was reviewed by the Review Panel of the State Disciplinary Board.

On Mar. 28, 2003, the Review Panel disagreed with the special master and by a **vote of 9-0 found no clear and convincing evidence of "dishonesty, fraud, deceit, or willful misrepresentation"** and thus no

violation of Standard 4.[8] The Review Panel listed as an aggravating factor "substantial experience in the practice of law." It also found a violation of Standards 30, 65(A), & 65(D) and recommended disbarment (21a).

Majors filed exceptions to the Review Panel's report in the GA court but the court disbarred Majors on July 10, 2003, on the basis of a violation of Standards 30, 65(A), and 65(D). The GA court ignored Majors evidence, consisting of published opinions that no GA attorney had ever been disbarred for commingling personal and client funds when there was no loss or dislocation to any client. (These cases are summarized below.) In fact, Majors showed that in many cases, which he had raised below, GA had not disbarred an attorney when she had used a client's money without authorization but had repaid or promised to restore the money. The GA court's disbarment order did not cite a single case and ignored the mitigating factors that Majors had never been the object of a disciplinary proceeding and was inexperienced in the practice of law (1a).

Majors filed a motion for reconsideration. Independently, his former counsel, Henry Milton Quillian, III, filed an *amicus curiae* motion with the GA court asking it to reconsider Majors' disbarment based on Quillian's nonappearance at the special master's July 11, 2002 hearing due to the special master's misrepresentation to Majors regarding the scope of that hearing. The *amicus* motion carried an incorrect case

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[8] **Notwithstanding its finding that Majors is not guilty of a Standard 4 violation,** the Review Panel inexplicably found him guilty of the aggravating factor of "dishonest or selfish motive" (30a). Such a finding is inconsistent with the finding that Standard 4 was not proven and suggests a scrivener's error.

number so Majors filed a Motion For Leave to File A Second Motion For Reconsideration attaching the Quillian brief. Majors' motions were denied including motion to stay issuance of mandate (31a, 32a).

REASONS TO GRANT WRIT OF *CERTIORARI*

I. GA DISBARMENT WAS "UNEXPECTED AND INDEFENSIBLE" UNDER *ROGERS* AND *BOUIE*

A. INTRODUCTION

In *Rogers v. Tennessee*, 532 U.S. 451 (2001), the court granted *certiorari* to the Tennessee Supreme Court upon request of petitioner who had been convicted of murder although the person he stabbed had died more than "a year and a day" after the stabbing. To affirm his conviction the Tennessee court abolished an element of the common law crime of murder, *viz.*, the victim must die within "a year and a day" of the act. This Court held that the state court did not violate the 14th Amdt.'s due process requirement of "fair warning" although it gave retroactive effect to abolition of the proximate-cause period. The reason given by this Court was that the judicial alteration was not "'unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue.'" *Rogers*, 532 U.S. at 462. There were four dissents.

Other cases also support a violation of due process: *Bouie v. City of Columbia*, 378 U.S. 347 (1964) (SC Supreme Court had previously interpreted state's trespass statute to require an unauthorized entry; state court interpreted statute for first time as not requiring an unauthorized entry to convict civil-rights sit-in demonstrators; held: violation of 14th Amdt. due process), and *Douglas v. Buder, Judge*, 412 U.S. 430

(1973) (Missouri had never interpreted a traffic stop followed by issuance of a traffic citation as an arrest; state judge held such was an arrest and a violation of probation; held: violation of due process). Similar to *Bouie* and *Buder*, the GA disbarment was "unexpected and indefensible" as shown below. *Cf. In re Surrick*, 338 F.3d 224 (3rd Cir. 2003) (Cowen, J., dissenting) (by changing required state of mind from premeditation to recklessness, the state court modified the definition of misrepresentation; same was unexpected and indefensible); *Eastern Enterp. v. Apfel*, 529 U.S. 498 (1998) (retroactive application of coal act to petitioner which had long ago ceased coal operations deprived it of 5th Amdt. due process).

Another way of analyzing the above cases is that an arbitrary, capricious state law violates Due Process. *Cf. Grayned v. Rockford*, 408 U.S. 104 (1972). *See also Tolchin v. Supreme Court of N.J.*, 111 F.3d 1099 (3rd Cir. 1997). The GA cases cited below demonstrate that **the manner in which GA disciplined Majors for technical violations is arbitrary and capricious**.

B. STANDARD 65(A)

Standard 65(A) of GA court Bar Rule 4-102(d) provides as follows: "A lawyer shall not commingle his client's funds with his own, and shall not fail to account for trust property, including money and interest paid on the client's money, if any, held in any fiduciary capacity."[9] While a violation of Standard 65(A) may be punished by disbarment, until it disbarred Majors, the GA court had never punished a lawyer with disbarment for a mere violation of Standard 65(A) where the lawyer did not convert a

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[9] All standards are copied from State Bar of GA, 1998-1999 DIRECTORY & HANDBOOK (1998).

client's money. *See, e.g.*, the following recent cases where the only violation found was of Standard 65(A):

In re Champion, 562 S.E.2d 179 (Ga. 2002) (lawyer admitted to bar in 1993, withdrew client funds from trust account and used same for five months for her own use, initially deceived bar; repaid all sums; had no disciplinary record; had personal and emotional problems; expressed remorse; suspended for 12 months); *In re Porges-Dodson*, 558 S.E.2d 721 (Ga. 2002) (lawyer admitted to bar in 1985, permitted escrow account to be overdrawn numerous times through negligence; there was "potential to injure clients"; had been disciplined on four previous occasions, including once for a violation of Standard 65; suspended for 12 months).

In re Drucker, 556 S.E.2d 129 (Ga. 2001) (lawyer admitted to bar in 1973, failed to notify client of receipt of settlement funds; converted same to own use; initially did not respond to bar; repaid funds; no prior discipline; had personal and emotional problems; suspended for six months); *In re Ross*, 531 S.E.2d 356 (Ga. 2000) (attorney admitted in 1994, received $169,000 in July 1997, on behalf of heirs of an estate for one of whom he was acting as attorney; he paid $120,000 to the heirs; commingled personal funds with trust funds and then wrote check for his office expenses; in May 1999, almost two years later, he repaid $40,000 to his client's replacement attorney; cooperated with bar; remorseful; inexperienced in practice of law; suspended for 12 months conditioned on "restitution for the money he owes the estate"); *In re Taylor*, 493 S.E.2d 708 (Ga. 1997) (lawyer whose date of bar admission is not disclosed employed a clerk who diverted trust funds for her personal use; lawyer made

restitution; cooperated fully with bar; suspended two years); *In re deRosay*, 494 S.E.2d 339 (Ga. 1998) (attorney whose experience is not stated wrote settlement checks to self out of trust account causing previous check to client to be returned for insufficient funds; complete restitution and apology to client, cooperative attitude, disclosure, remorse, no prior discipline, physical impairment and personal problems; suspended six months).

In re Zaleon, 504 S.E.2d 702 (Ga. 1998) (closing attorney for client which was secured lender collected excess closing costs from client's borrowers; did not reimburse client or borrowers with same, but used some funds for ordinary business expenses of firm; substantial experience in practice of law, mishandled funds in fiduciary capacity; no prior disciplinary record, disclosure, good reputation, remorse; violated Standard 65(A); suspended for six months conditioned upon – within nine months -- reimbursing borrowers with all sums improperly collected[10]); *In re Peek*, 359 S.E.2d 677 (Ga. 1987) (attorney with substantial experience in practice of law commingled personal funds with trust funds by depositing latter in personal bank account, wrote check to bonding company for client that bounced; no fraud or dishonest purpose; poor business practices; violated Standard 65; suspended for six months).

See also the following cases where there was not only a violation of Standard 65(A), but also a violation of other standards (but not Standard 65(D) which are collected below): *In re Reuss*, 546 S.E.2d 495 (Ga. 2001) (attorney admitted to bar in 1976, filed Chapter 11

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[10] GA court had earlier rejected recommendation of reprimand, over two dissents. *In re Zaleon*, 494 S.E.2d 669 (1998).

petition in U.S. Bankruptcy Court but did not disclose or obtain court approval for attorney's fees charged to debtor; received payment of fees from subsidiary of debtor; no prior discipline; substantial experience in practice of law; violated Standard 65(A) and Standard 4; suspended for two years); *In re Lawrence*, 520 S.E.2d 895 (Ga. 1999) (lawyer admitted to bar prior to Mar. 1991, created corporate investment vehicle; without consent of investors he placed corporation into Chapter 11 bankruptcy; failed to account, disclose, and lost investment funds; cooperative with bar; made disclosure; no dishonest or selfish motive; violated Standard 4, Standard 30, Standard 33, Standard 44, and Standard 65(A); prior discipline for violation of Standard 22 and Standard 44; suspended 60 days); *In re Chapman*, 492 S.E.2d 235 (Ga. 1997) (lawyer whose date of bar admission is not given found to have violated Standards 23, 44, 61, 63, and 65 in three formal complaints and five additional complaints for failure to refund fees to clients but without intent to convert client funds or failure to deliver services, but which "caused harm to numerous clients"; suspended 12 mo).

The GA court disbarred Majors, who did not convert funds, for a violation of Standard 65(A), but previously failed to disbar others who did convert funds. The GA court's decision in this case is an unexpected and indefensible judicial action, in violation of the 14th Amdt. *See Rogers* and *Bouie, supra.*

C. STANDARD 65 (D)

Standard 65(D) of GA court Bar Rule 4-102(d) is long, technical, and quoted in the Appx. (41a.) In the following cases, only a violation of Standard 65(D) was found but no guilty lawyer was disbarred: *In re Hayes*, 532 S.E.2d 371 (Ga. 2000) (lawyer admitted to bar prior

to Nov. 1992, endorsed checks without authorization, mismanaged escrow account in that it had substantial negative balances in eight-month period, continued personal use of trust for some time; violated Standard 65(D); major depressive disorder; no clients injured; all deficiencies covered; suspended for 18 months); *In re Gavel*, 507 S.E.2d 423 (Ga. 1998) (attorney admitted to bar prior to 1996, set up law firm to compete with one by whom he was employed; siphoned off clients to his undisclosed law firm; delayed creating trust account; failed to keep records of trust account after created; no prior discipline; violated Standard 65(D); suspended three years).[11] *In re Weems*, 507 S.E.2d 736 (Ga. 1998) (lawyer within two years of admission to bar withdrew trust funds for personal use over period of six months; no prior discipline, inexperience in practice of law, acted without knowledge and unintentionally, disclosure, cooperative attitude, remorse; violated Standard 65(D); suspended for 18 months); *In re Marcantonio*, 491 S.E.2d 49 (Ga. 1997) (attorney admitted to bar in 1990 failed to maintain accounts or keep balances separate; no prior discipline, inexperienced in practice of law; under professional and personal influence of Gavel;[12] violated Standard 65(D); suspended for 30 months).

In several cases the GA court found violations of Standard 65(D) and other standards, including Standard 65(A), but did not disbar: *In re Frazier*, 546 S.E.2d 272 (Ga. 2001) (attorney admitted to bar for less than three years, converted client funds, client not

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[11] Gavel earlier petitioned for emergency suspension of license prior to U.S. trustee's filing of bar complaint. *In re Gavel*, 475 S.E.2d 913 (Ga. 1996).

[12] See *In re Gavel, infra.*

ultimately harmed; violated Standard 65(D) and Standard 65(A); suspended for one year).

In re Danby, 553 S.E.2d 157 (Ga. 2001) (attorney admitted to bar in 1992; deemed relatively inexperienced; violated Standard 65(D) and Standard 65(A); prior discipline for violation of Standard 44; did not deposit funds into IOLTA account because closed; did not recognize wrongful nature of conduct; suspended for three years). In *Dansby* the court stated at p. 159:

> Although disbarment is a permissible sanction for the violation of Standard 65 which Dansby has admitted, the sanction "is generally appropriate when a lawyer engages in any serious criminal misconduct ... or engages in any other intentional conduct involving dishonesty, fraud, or deceit." *In the Matter of Freeman*, 269 Ga. 906, 506 S.E.2d 872 (1998). By contrast, we have imposed suspensions in other cases where misconduct was not intentional and clients were ultimately not harmed, as appears to be the case in this matter. [cits. omitted]"

Cf. In re Hodges, 485 S.E.2d 791 (Ga. 1997) (lawyer with "substantial experience in the practice of law" paid client with checks from firm operating account; disbursed trust funds for benefit of client in which he had a personal financial interest; as a result of said disbursement one of three checks to another client bounced; made restitution; violated Standard 61 and Standard 63; suspended two years).

Here again the GA court had never before punished a lawyer with disbarment for a violation of Standard 65(D) without a defalcation. Thus

disbarment of Majors was unexpected and indefensible under *Rogers* and *Bouie*.

D. STANDARD 30

Standard 30 of GA court Bar Rule 4-102(d) provides as follows: "Except with the written consent **or** written notice to his client after full disclosure a lawyer shall not accept or continue employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property or personal interests." (emphasis added) GA has never disbarred an attorney for a mere violation of Standard 30. Typical is *In re Hendley*, 478 S.E.2d 134 (Ga. 1996), which involved an attorney admitted to the bar in 1990 who represented a top NFL football draft choice and at the same time had a finder's fee agreement with a promoter for signing the draft choice to an endorsement contract. The court found a violation of Standard 30 although attorney Hendley's client did not object to his conflicted interest and did not lose money; the punishment therein was a suspension for 90 days. In aggravation, the court found that Hensley (1) had also violated Standard 40 by accepting compensation for legal services from one other than his client; (2) had been previously suspended for failing to respond to discovery in a prior disciplinary matter; and (3) refused to acknowledge the wrongful nature of his conduct.[13]

As shown above, Majors gave "written notice to his client," TLA, when he delivered to Featherly on Dec. 7, 1998, a copy of his "Complaint for Equitable Distribution" since Featherly was the only other

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[13] For subsequent, unrelated infractions of bar rules, Hendley was later disbarred, *In re Henley*, 518 S.E.2d 418 (Ga. 1999).

director, corporate officer, 50 percent shareholder, or interested party in TLA.

Majors did not obtain "written consent [of] his client [TLA]" to the lawsuit, but such an attempt would have been futile since the lawsuit sought relief from Featherly who obviously would not consent to litigation against her. Yet written *consent* was not necessary under the literal language of Standard 30 since he gave his client, TLA, "written *notice*."

The Standard is not an absolute prohibition on conflicted representation, but only requires written notice **or** written consent. If by the *Majors'* case, the GA court placed an absolute prohibition on conflicted representation, the court has erected a barrier to GA attorneys that it has not erected against other fiduciaries, such as general partners. In *Westminister Prop., Inc. v. Atlanta Assoc.*, 301 S.E.2d 636 (Ga. 1983), the GA court authorized a general partner to foreclose on the partnership's only real property when the partner was a secured lender because otherwise partners would not fund partnerships.[14] Thus the GA court's treatment of Majors, even if acting as a fiduciary,[15] is unexpected and indefensible, even from a business standpoint. Moreover, placing Majors in a

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[14] The GA court, 301 S.E.2d n.1, dismissed the plaintiffs' claims that Westminister Properties, Inc. ought to resign as general partner in light of its being a secured party. By the same token, GA court should not have left the implication that to save himself from bar discipline Majors should have resigned as Chief Executive Officer, Secretary, and Registered Agent of TLA.

[15] While Majors had admitted acting as a fiduciary, he was not a fiduciary but a banker for TLA's clients in the unusual circumstances when governments should place client funds in his hands, or the clients should not tender cashier's checks, but personal checks, to him.

class of one, that is as a lawyer-businessman-shareholder, and barring him from suing his close-corporation to distribute its assets is to violate his right to Equal Protection of the Law under the 14th Amdt.

The GA court did not prove that Majors' "exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property or personal interests." Rather the Special Master and the Review Panel presumed such an "affect" and -- like Chicken Little -- cited "potential serious injury" and "potentially significant adverse effect." These terms are unconstitutionally vague under the 14th Amdt. *Cf. Kolander v. Lawson*, 461 U.S. 352 (1983) (Los Angeles ordinance prohibiting "loitering" held void for vagueness under 14th Amdt. in requiring accused to provide "credible and reliable identification" when requested by police) (statute rested complete discretion in police whether suspect had satisfied the statutory definition and could go on his way). In sum the GA determination that Majors violated Standard 30 is "unexpected and indefensible" under *Rogers* and *Bouie*.

E. STANDARD 4

Standard 4 provides that "A lawyer shall not engage in professional conduct involving dishonesty, fraud, deceit, or willful misrepresentation. A violation of this standard may be punished by disbarment."

While the special master found that Majors had violated this standard, **the Review Panel by a vote of 9-0 in Majors' favor disagreed**. Thus Majors' actions of accepting service of the complaint as TLA'S Registered Agent in order to obtain a hearing on his request for a TRO and appointment of a receiver-trustee and seeking to oust Hardwick as attorney for TLA were not made

with a bad motive, but an innocent intent. The GA court did not disturb this finding of fact by the Review Panel.

F. MITIGATING FACTORS

GA law clearly requires the GA court to consider mitigating factors. In *In re Morse*, 456 S.E.2d 52 (Ga. 1995), the GA court adopted the 1991 ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS. Those standards require a court imposing discipline to consider factors in mitigation of punishment. Several mitigating factors listed in the ABA Standards are present in *In re Majors*, but the GA court ignored them, observing that, "although the record showed no evidence of actual conversion of client or fiduciary funds *** [w]e note no factors in mitigation ...."

The ABA Standards list the following factors in mitigation that were ignored by the GA court: (a) no prior discipline; (b) inexperience in the practice of law; (c) no harm to a client; (d) personal and emotional problems that contributed to the disciplinary infractions; and (e) honesty and forthrightness. These are examined as follows: *(a) No prior discipline.* In almost all of the disciplinary cases cited in this brief, the GA court noted that the respondents had no prior history of discipline. By contrast, Majors had no prior discipline, but the GA court did not note this fact or treat him similarly or fairly. *(b) Inexperience in practice of law.* GA gives credence to this mitigating factor. *See, e.g., In re Aronin*, 529 S.E.2d 373 (Ga. 2000) (attorney admitted to bar in 1992, filed legal documents in federal court that he predated to a date prior to his suspension from practice of law for failing to complete mandatory continuing legal education and to pay bar dues; violated Standard 4 and Standard 25; deemed

relatively inexperienced in the practice of law; no prior discipline; motive to help *pro bono* client; suspended for 18 months); *In re Danby*, 553 S.E.2d 157 (Ga. 2001) (attorney admitted to bar in 1992, deemed relatively inexperienced; violated Standard 65(D) and Standard 65(A); suspended three years); *In re Marcantonio*, 491 S.E.2d 49 (Ga. 1997) (attorney admitted in 1990, failed to maintain accounts or keep balances; suspended for 30 months); *In re Weems*, 507 S.E.2d 736 (Ga. 1998) (lawyer admitted to bar two years withdrew trust funds for personal use over period of six months; no prior discipline, inexperienced in practice of law, acted without knowledge and unintentionally, made disclosure, cooperative attitude, remorse; suspended for 18 months). By contrast, Majors was admitted in May 1993, the Formal Complaint was served on him on May 17, 2000, and it listed violations commencing Dec. 7, 1998, when he had been a member of the bar for barely five years.

(c) No harm to a client. The special master found that **no client had been injured** (15a) The GA court refused to consider this most important mitigating factor. This was unexpected and indefensible. *(d) Personal and emotional problems that contributed to alleged disciplinary infractions.* The record is replete with evidence of Majors' personal and emotional problems caused by Featherly. In particular, with Hardwick's assistance, Featherly had sued him for divorce, being the equivalent of charging him with the crime of bigamy. *(e) Honesty and forthrightness.* At the July 11, 2002 hearing, the special master recognized that Majors was honest with the court. Majors freely disclosed that he had been intimate with Featherly prior to his marriage to Ferguson.

For the GA court to give no credit for these mitigating factors after it announced the applicability of the 1991 ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS (*In re Morse*, 456 S.E.2d 52 (Ga. 1995)), is for the court to be "unfair and arbitrary." *See Rogers; Bouie.*

II. GA PROCEDURE ON JULY 11, 2002 SHOULD SHOCK CONSCIENCE OF COURT

14th Amdt. Due Process requires fair notice of trial. *In re Ruffalo*, 390 U.S. 544 (1968). The bar communicated *ex parte* with the special master in response to a written inquiry as to the witnesses that it would call at an evidentiary hearing on July 11, 2002. **An assistant general counsel told the special master that the bar would not present any testimony**. The special master related this information to Majors. The effect was to convert an evidentiary hearing into mere oral argument. Majors had previously made arrangements with his former attorney to appear at the July 11, 2002 hearing and testify on his behalf. **After receiving the special master's notification, Majors dismissed his attorney**. See *Amicus Curiae* Motion, filed Aug. 2003. However, at "oral argument," Majors was sandbagged by the special master and the State Bar when **the assistant general counsel called Majors -- who was unrepresented -- as a witness, and the special master permitted this "unusual" procedure.** In fact it deprived Majors of due process of law.

III. GA PENALIZED MAJORS' RELOCATION TO SC BY DISBARRING HIM UNDER --

A. INTRODUCTION.

States have attempted to require their lawyers to be residents at the time of bar application. This has failed. *Supreme Court of NH v. Piper*, 470 U.S. 274 (1985). States have tried to cabin their lawyers within the state after admission. This has failed. *Barnard v.*

Thorstenn, 489 U.S. 546 (1989). States have directed their lawyers to maintain a *bona fide* office within the state. So far, this has succeeded in the northeast. *Tolchin v. Supreme Court of NJ*, 111 F.3d 1099 (3rd Cir. 1997). GA is trying to keep its attorneys from practicing law from outside the state by less formal means, *viz*, by publicly punishing those who have relocated outside GA, and with disbarment, rather than suspension. *In re Majors, supra.* Such action violates the Const. under–

B. PRIVILEGES AND IMMUNITIES CL.

> The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. *** (Art. IV, Sec. 2.)

The practice of law is a privilege which is protected by the Privileges and Immunities Cl. *Supreme Court of NH v. Piper*, 470 U.S. 274 (1985). Judicial enforcement of bar disciplinary rules which does not impose identical requirements on residents and nonresidents or which has a discriminatory effect on nonresidents is a violation of Art. IV, Sec. 2. If a state treats resident and nonresident attorneys differently in disciplinary cases, the state must provide a substantial reason for the difference, and there must be a substantial relationship between the disbarment of a nonresident attorney and the state's objective of keeping that state's lawyers strongly connected to the state. If there are less restrictive means available for keeping a state's attorneys in that state, *e.g.*, requiring its lawyers to maintain a *bona fide* office within the state, it must utilize the less restrictive means. *See, generally, Tolchin v. Supreme Court of N.J., supra.*[1]

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[1] Please note that Majors is not claiming that he should be able to carry over into SC his privilege and immunity to practice law. Petitioner acknowledges that to practice law in SC he must satisfy

The cases supporting Majors are: In *Supreme Court of NH v. Piper*, 470 U.S. 274 (1985), the high court invalidated a bar rule of the NH Supreme Court that required a member of the NH bar to reside in the state. The court held that the practice of law was a fundamental right under Art. IV. The court then ruled that the state bar rule was an unreasonable burden on Ms. Piper's right to practice law in the state even though she resided outside the state.[2] In *Barnard v. Thorstenn*, 489 U.S. 546 (1989), the court invalidated a similar bar rule of the District Court for the U.S. Virgin Islands and also struck down an additional rule which required the applicant to pledge he would reside in the Virgin Islands for at least a year after admission.

In *Crandall v. Nevada*, 6 Wall. 35 (1867), the high court struck down a Nevada statute that imposed a tax on persons crossing Nevada state lines. This tax had the effect of penalizing and discouraging Nevada residents from leaving the state. The high court invalidated the statute under the Privileges and Immunities Cl. of Art. IV, Sec. 2.

In a case from GA, the high court endorsed a broad application of Art. IV. In *Jones v. Helms*, 452 U.S. 412 (1981), the high court upheld a GA statute that increased the punishment for nonsupport of a child from a misdemeanor to a felony if the accused left the

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that state's bar admission requirements. *See Romeu v.* Cohen, 265 F.3d (2nd Cir. 2001).

[2] By contrast in *Baldwin v. Fish & Game Comm. of Mont.*, 436 US. 371 (1978), utilizing strict scrutiny review, the high court held that the privilege to hunt big game (elk) in another state was not a fundamental right of national citizenship and upheld a higher cost to nonresidents for licenses.

state.[3] But the high court found that the increased punishment was rationally related to the additional burden placed on the state to apprehend and to bring to justice the outlaw. The bar made no similar showing regarding its prosecution of Majors.

Other Art. IV, Sec. 2 cases supporting Majors' argument that the GA court denied his Privileges and Immunities by disbarring him for relocating outside GA are *Toomer v. Witsell*, 334 U.S. 385 (1948) (SC could not bar shrimpers from other states from fishing in SC continental waters by disproportionate license fees); *United Bldg. & Constr. Trades Council v. Mayor of Camden*, 465 U.S. 208 (1984) (municipal ordinance required 40 percent of employees of contractors working on city projects to be Camden residents) (ordinance may be attacked by nonresidents under Art. IV) (case remanded for necessary findings); *Lunding v. N.Y. Tax Appeals Trib.*, 522 U.S. 287 (1998) (unlawful to grant alimony deduction from gross income to resident taxpayers, but not to nonresident taxpayers).

Most notable about the above cited cases is the standard of review the high court has imposed on those attempting to uphold state restrictions on the Art. IV, Sec. 2 right to travel or relocate:

> The standard of review employed in *Toomer, Baldwin, Piper, Camden,* and *Lunding* – characterized by a **shift in the burden of proof to the discriminating state** and by an insistence on a fairly precise fit between remedy and classification – is almost as demanding as that established by the Warren Court in Equal

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[3] *Dictum* in *Jones v. Helms* indicates that *dictum* in *Selling v. Radford*, 243 U.S. 46 (1917) (a state could disbar a lawyer merely for moving outside the state) is incorrect.

Protection Clause and the First Amendment strict scrutiny. (emphasis added)

1 Tribe, Laurence H., AMERICAN CONST'L LAW 1269 (3rd ed. 2000).

Applying these cases to the facts of this case, the questions are threefold: (1) Did GA disbar Majors as a punishment for appearing to relocate his GA law practice to the State of SC? (2) Does the disbarment of Majors on account of relocating to SC discriminate against nonresidents of GA? (3) Is the imposition too heavy a burden on his privilege to practice law in GA, and does disbarment as a sanction bear a substantial relationship to GA's legitimate objective of curbing unethical conduct by GA attorneys?

Regarding question (1): GA punished Majors for relocating outside GA because (a) it discussed the relocation several times in its opinion; (b) it noted that he did not harm anyone; (c) it concurred with the Review Panel that he was not dishonest or engaged in fraud, deceit, or willful misrepresentation; (d) the opinion does not cite a single case despite Majors' discussion of numerous cases not imposing disbarment under like circumstances, e.g., *In re Frazier*, 546 S.E.2d 272 (Ga. 2001) (inexperience in practice of law and lack of knowledge of bar rules); *In re Aronin*, 529 S.E.2d 373 (Ga. 2000); and (e) it is arbitrary and capricious considering his lack of knowledge of the bar rules and inexperience in the practice of law.

Regarding question (2): GA discriminates against nonresident GA attorneys because it disbars them for mere technical violations of IOLTA rules, rather than suspending them, as it does with resident GA attorneys, with the result that such arbitrariness

will tend to imprison attorneys in GA.[4] Regarding question (3): common sense dictates that disbarment for a mere technical violation is too heavy a burden on Majors' privilege to practice law in GA, and it does not bear a substantial relationship to GA's legitimate objective of curbing unethical conduct by GA attorneys. Therefore, the GA decision violates Majors' Privileges and Immunities under Art. IV, Sec. 2.

C. PRIVILEGES OR IMMUNITIES CL.

*** No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the U.S. *** (14th Amdt., Sec. 1)

In *Saenz v. Roe*, 526 U.S. 489 (1999), the court struck down a California statute that limited welfare benefits to new residents for one year to the amount the residents had been receiving in their former state of residence. The basis for the ruling was the Privileges or Immunities Cl. of 14th Amdt., Sec. 1. Under "strict scrutiny" the court examined the state statute and found that new residents of California were treated worse than older residents, that all of them were citizens of the state under the 14th Amdt. who had to be treated equally, and that the law divided its new citizens into numerous classes depending on the amount of welfare benefits paid by the states of their origin.

Basing this constitutional argument on the Privileges or Immunities Cl. of the 14th Amdt. might seem inconsistent with the *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873) (New Orleans butchers had no recourse under the 14th Amdt.'s Privileges or

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[4] A lawyer's relocation outside GA is not rationally part of any activity for which she may be disciplined. Therefore, the rule of *Jones v. Helms* is not applicable.

Immunities Cl. when the city settled a monopoly on a state-sponsored slaughter-house with the result that the private butchers were put out of business). However, Kevin C. Newsome in *Setting Incorporation Straight: A Reinterpretation of the Slaughter-House Cases*, 109 YALE L.J. 643 (1999), argues that Justice Miller's opinion for the court has been misinterpreted and that it permits the incorporation of most of the Bill of Rights into the Privileges or Immunities Cl. of the 14th Amdt. Professor Tribe may not disagree with him. See Tribe, Laurence H., Saenz *Sans Prophecy: Does the Privileges or Immunities Revival Portend the Future - or Reveal the Structure of the Present*, 113 HARV. L. REV. 110 (1999).

D. EQUAL PROTECTION CL. (14th Amdt.)

Judicial rules fall within the ambit of the Equal Protection Cl. of the 14th Amdt. The level of review – strict, heightened, or rational – is determined by the fact that the privilege to practice law is not a fundamental right under decisions interpreting the Equal Protection Cl., although the practice of law is a fundamental right under the Privileges and Immunities Cl. *See Supreme Court of NH v. Piper*, 470 U.S. 274 (1985); *Leis v. Flynt*, 439 U.S. 438 (1979). *Cf. Friedman v. Supreme Court of VA*, 822 F.2d 423, 426 (4th Cir. 1987), *aff'd* 487 U.S. 59 (1988) (Privileges and Immunities Cl. protects more rights than fundamental individual rights under 14th Amdt.). In *Tolchin v. Supreme Court of N.J.*, 111 F.3d 1099, 1114 (3rd Cir. 1997), the level of review is rational basis review. Majors disagrees with *Tolchin* for the reasons given below:

GA created a class of one, occupied solely by Majors, a GA attorney who relocated to SC to live with his wife, a SC attorney. The judicial action which created this class of one is discriminatory. It is not

rationally related to any legitimate state interest. Supporting cases are the following:

In *Zobel v. Williams*, 437 U.S. 55 (1982), the Supreme Court held that Alaska's graduated payments of oil revenues to its citizens based on their years of residency in the state violated the 14th Amdt.'s Equal Protection Cl. The state's interest in persuading its residents not to leave the state was an improper purpose and the financial incentive to maintain Alaskan residence was not rationally related to the distinctions made by state law. Justice O'Connor concurred based on her analysis that the Alaskan statute violated Art. IV's Privileges and Immunities Cl. She found that the statute inhibited a person from leaving the State of Alaska because that person would forfeit financial payments. She stated: "It is difficult to imagine a right more essential to the Nation as a whole than the right to establish residence in a new State." 437 U.S. at 77.

Shapiro v. Thompson, 394 U.S. 618 (1969), held that a California statute that denied to a new resident welfare benefits for the first year of residency in the state violated the Equal Protection Cl. because it was impermissible to establish a class of new residents with lesser rights than other residents.

For these reasons, the GA decision is subject to heightened review, and upon that review, the decision violates Majors' rights to Equal Protection of Law.

E. COMMERCE CL. (Art. I, Sec. 8)

While the Commerce Cl. explicitly speaks only to the power of Congress to regulate interstate commerce, the courts have read the clause to limit the power of States to interfere with or impose burdens on interstate commerce under what is known as the

"dormant" or "negative" commerce clause. The dormant aspect of the Commerce Cl. prohibits "economic protectionism" designed to benefit in-state economic interests by burdening out-of-state competitors. Rules of state bars – under the control of lawyers – can be subjected to a Commerce Cl. analysis. *Goldfarb v. VA State* Bar, 421 U.S. 773 (1975) (court rule regarding admission to VA bar of licensed attorneys of other states held to affect interstate commerce). If the effect of an in-state bar rule is not neutral, but discriminates against nonresidents, the rule violates the Commerce Cl.; and in such case, the court employs a heightened level of scrutiny to the bar rule. *Cf. Brown-Forman Distillers Corp. v. N.Y. Liquor Auth.*, 476 U.S. 573 (1986). On the other hand, if the bar rule does not discriminate against nonresident attorneys, then a balancing test is employed to test the constitutionality of the bar rule. *Cf. Pike v. Bruce Church,* 397 U.S. 137 (1970). The court balances the national interest in a vibrant interstate commerce against local interest promoted by state regulation. *See generally Tolchin v. Supreme Court of N.J.*, 111 F.3d 1099, 1109 (3rd Cir. 1997) (balancing test approved to assess validity under dormant commerce cl. of *bona fide* office requirement of N.J. bar) ("The requirement's burden affects interstate commerce in that it limits the mobility of some lawyers and reduces the options for consumers of the services they provide.").

The record before the GA bar is filled with evidence of Majors numerous activities in both GA and SC and his traveling back and forth in connection with TLA's business. GA's arbitrary disbarment of Majors clearly burdens interstate commerce, and this burden outweighs the benefit of cabining GA lawyers in GA.

E. DUE PROCESS (14th Amdt., Sec. 1)

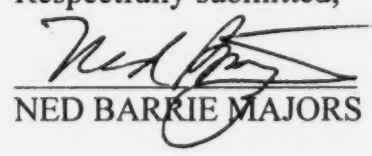
Respondent bar did not give GA attorney Majors fair warning that if he relocated to SC he would be disbarred for a disciplinary infraction that theretofore had only been punished by suspension. *See Grayned v. Rockford*, 408 U.S. 104 (1972) (city anti-noise ordinance standards must be sufficiently clear to avoid arbitrary and discriminatory enforcement by police). *Cf. Aptheker v. Secretary of State*, 378 U.S. 500 (1966) (Under Subversive Activities Control Act of 1950, Section 6, U.S. had denied passport to Aptheker; held: act is unconstitutional under 5th Amdt. Due Process because it impairs one's liberty to travel in interstate commerce). Therefore GA denied Majors due process.

CONCLUSION

All GA disciplinary cases are unsigned, *per curiam* decisions. The decisions are cursory. There is no evidence that the court performs reasoned factual analysis. There is no balancing; rather the court mechanically applies "law" to "facts." When the GA disciplinary decisions are compared and contrasted, there is no rationale that differentiates one case from another. There is nothing in *Majors* that should cause the GA court to disbar Majors, in view of the many cases cited above. The GA regime is irrational, *i.e.*, arbitrary, and capricious. The Supreme Court must grant *certiorari* to correct not only this arbitrary and capricious decision but to put a stop to a systemic failure of justice imposed by the GA court on its lawyers.

This 14 day of Oct., 2003.

Respectfully submitted,



NED BARRIE MAJORS

[276 Ga. Advance Sheets 878: In the Supreme Court of Georgia]

S03Y1128. IN THE MATTER OF NED BARRIE MAJORS.

PER CURIAM.

This disciplinary matter is before the Court pursuant to the Report and Recommendation of the Review Panel of the State Disciplinary Board which adopted the findings of fact and most of the con- [page 879] clusions of law set out in the Report and Recommendation of the special master who was appointed following the filing of a Formal Complaint by the State Bar. Considering the record, the Review Panel found that Majors violated Standards 30, 65(A) and 65(D) of Bar Rule 4-102(d), any of which may be punished by disbarment, and recommended that Majors be disbarred. We agree.

The extensive record shows Majors to be a South Carolina resident who has been a member of the State Bar of Georgia since 1993; in 1992, Majors incorporated Tax Lien Acquisitions, Inc. ("TLA"); the stock of TLA was owned by Majors and Ms. Lynn Featherly in equal shares; at all relevant times, Majors was a corporate officer in TLA, acted as TLA's registered agent and after his admission to the Bar in 1993, became Chief Legal Counsel for TLA; from 1993 until June 1999 when TLA was placed into receivership pursuant to a court order, Majors held himself out as legal counsel for TLA; in 1998, Majors filed a Complaint for Equitable Distribution in the Superior Court of Fulton County

naming Featherly and TLA as defendants, and in his capacity as TLA's registered agent accepted service of his own complaint; in accepting service, Majors listed his place of residence as TLA's corporate office which was located in Roswell, Georgia; after Featherly's attorney answered the complaint on TLA's behalf, Majors successfully sought to have that attorney disqualified, at least in part, on the grounds that he, Majors, was TLA's sole corporate counsel; thus, Majors held himself out as TLA's corporate counsel at various times throughout the litigation; Majors never disclosed or provided written notice to TLA or Featherly that his interest in the litigation may affect his professional judgment and never obtained TLA's consent to continue his representation of TLA; after his admission to the Bar, Majors opened a lawyers' trust account ("IOLTA") in the name of "Ned Majors Trust FBO Tax Liens"; Majors improperly withdrew money from that account for his own personal use; he failed to account for funds contained in that account; and he failed to keep or maintain appropriate records reflecting the exact balance held in that account for each client or other fiduciary.

These facts, which are amply supported by the record before the special master, mandate the conclusion that Majors violated Standards 30, 65(A) and 65(D) of Bar Rule 4-102(d). Although Majors now complains about the manner in which the evidentiary hearing was held, he failed to preserve any objections he may have had to that hearing. Therefore, the Review Panel did not err in refusing to grant Majors a new hearing. Thus, the lower tribunals were correct in their determination that Majors violated disciplinary

rules which would allow for disbarment. In aggravation of discipline, we note that although the record showed no evidence of actual conversion of client or fiduciary funds, Majors engaged in significant and extensive [page 880] commingling of personal funds with client and fiduciary funds, thereby creating a situation which had the potential to cause serious injury to his clients; that Majors engaged in a pattern of misconduct which he knew or should have known to be in violation of the Disciplinary Rules; and that, even how, Majors appears to recognize neither the wrongful nature of his conduct nor the threat to the public if the Disciplinary Standards are not scrupulously observed. We note no factors in mitigation and therefore we find that the facts in this case support the imposition of a significant sanction for the violations shown herein. Accordingly, it is hereby ordered that Majors be disbarred from the practice of law in Georgia. He is reminded of his duties under Bar Rule 4-219(c).

Disbarred. All the Justices concur.

DECIDED: July 10, 2003 --
RECONSIDERATION DENIED: July 30, 2003

Disbarment.
William P. Smith III, General Counsel State Bar, Kellyn O. McGee, Assistant General Counsel State Bar, for State Bar of Georgia.
James E. Spence, Jr., for Majors.

Filed: August 30, 2002

IN THE SUPREME COURT
STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS

IN THE MATTER OF:	)	SUPREME COURT
	)	DOCKET NO. S00Y1470
NED BARRIE MAJORS:	)	STATE DISCIPLINARY
	)	BOARD DOCKET NO. 3988
State Bar No. 466845	)	OGC File No. 990191
Respondent	)	

REPORT AND RECOMMENDATION OF THE SPECIAL MASTER

Pursuant to Bar Rules 4-210(k) and 4-217, the undersigned Special Master files this Report and Recommendation with respect to this disciplinary proceeding against Respondent Ned Barrie Majors, State Bar No. 466845.

STATEMENT OF PROCEEDINGS

This disciplinary proceeding was brought against Respondent Majors with the filing of the Formal Complaint by the State Bar of Georgia, after a finding of probable cause, alleging violation of Standards 4, 30, and 65(A) [*sic*] of Bar Rule 4-102(d), as alleged in Counts One through Three of the Formal Complaint.

The State Bar of Georgia filed its Formal Complaint, and perfected service, pursuant to the requirements of Bar Rule 4-203.1. Respondent filed a timely answer to the Formal Complaint. [page 2]

This Special Master extended the deadline for the evidentiary hearing to allow for discovery. Upon completion of discover [*sic*], both the State Bar of Georgia and Respondent filed various motions, including motions for summary judgment. This Special Master disposed of all motions, except the State Bar's and Respondent's cross motions for summary judgment, which were deferred until after an evidentiary hearing.[1]

FINDINGS OF FACT

The Respondent is Ned Barrie Majors, State Bar No. 466845, (hereinafter "Respondent"). Respondent is a resident of the State of South Carolina. Respondent is licensed to practice law in the State of Georgia and has been a member of the State Bar of Georgia since 1993. Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Georgia, the State Disciplinary Board of the State Bar of Georgia, and of a Special Master properly designated by the Supreme Court of Georgia.

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[1] In light of the evidence at hearing at which all submissions relating to the summary judgment motion were deemed to be a part of the record, these summary judgment motions will be denied as moot.

During 1992, Respondent created, or caused the incorporation of an entity known as Tax Lien Acquisitions, Inc. in Georgia (hereinafter referred to as "TLA"). Prior to December 7, 1998, and at all times relevant to this proceeding, Respondent held approximately half of TLA's stock.

At all times relevant to this proceeding, Respondent held one or more of TLA's corporate offices. This included acting as Registered Agent for TLA and serving as Chief Legal Counsel for TLA, subsequent to his admission to the State Bar of Georgia. Respondent subsequently held himself out as legal counsel for TLA until TLA was placed in receivership, pursuant to a court order. [page 3]

On December 29, 1998, Respondent filed an action in the Superior Court of Fulton County, assigned Civil Action No. 1998-CV-03450 and styled Ned B. Majors vs. Lynn Gondel Featherly and Tax Lien Acquisitions, Inc. (hereinafter referred to "Majors v. Featherly and TLA."). Majors v. Featherly and TLA was a Complaint for Equitable Distribution.

O.C.G.A. 14-2-501(2)(A) requires that an individual who acts as a registered agent for a corporation must be, "An individual who resides in this state and whose business [*sic*] is identical with the registered office." The complainant [*sic*] filed in Majors v. Featherly and TLA listed Respondent's address as, 836 Howard Parkway, Myrtle Beach, SC 29577. Nevertheless, on or about December 11, 1998, Respondent signed an Acknowledgment of Service in this case as Registered Agent for TLA, an opposing

party. The Acknowledgment of Service by Registered Agent for TLA listed Respondent's address as, "Tax Lien Acquisitions, Inc., 205 Market Place, Suite 205, Roswell, Ga. 30075." In spite of personally being an adverse party to TLA in this litigation, on one or more [*sic*] Respondent held himself out as legal counsel for TLA. Based on this representation, Respondent filed two motions seeking to disqualify Clifford Hardwick from representing TLA in the litigation and seeking to have his answer on behalf of TLA stricken.[2]

Respondent's true motive in filing Majors v. Featherly and TLA in this manner is unclear. Respondent personally served the complaint on Ms. Featherly, his partner in Tax Lien Acquisitions, Inc., and it appears that he sought the equitable distribution of TLA's corporate assets among other remedies. On its face, Respondent's quest for relief appears to have been the product of a bitter business dispute. The complaint contained extremely serious allegations of misconduct against Ms. Featherly, including embezzlement. Ms. Featherly, however, was [page 4] not a lawyer. It is quite possible that Respondent was attempting to capitalize on that fact and to use the litigation for purposes of extracting concessions from Ms. Featherly.

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[2] The trial court ultimately granted the motion to disqualify Hardwick from representing both Featherly and TLA, but not for the reason claimed by Respondent, which was that he was TLA's legal counsel in the matter.

Respondent's acknowledgement [*sic*] of service on behalf of TLA was an act that could have been in furtherance of such a scheme. It was unquestionably false in representing Respondent's residence to be Roswell, Georgia, when Respondent then resided in South Carolina. By naming TLA as an adverse party in this action and then purporting to represent TLA as its chief legal counsel, Respondent was acting under a conflict of interest. He used this status to position himself to make representations to the Court on behalf of himself and TLA. The fact that Ms. Featherly ultimately secured separate counsel and defended herself in this litigation is immaterial. It requires little imagination to visualize how this litigation might have proceeded if Ms. Featherly had lacked the resources or the will to defend herself. From this record, it is evident that Respondent did not act as counsel for TLA in the foregoing litigation with Ms. Featherly's knowledge or written consent. Nor did Respondent give written notice to TLA or Ms. Featherly that his own financial, business, property or personal interests might adversely affect the exercise of his professional judgment on behalf of TLA.

Subsequent to his 1993 admission to practice law in the State of Georgia, Respondent opened and maintained an IOLTA account with First Union National Bank. Respondent called the IOLTA account the "Attorney Ned Majors Trust FBO Tax Liens." On numerous occasions, Respondent deposited client or fiduciary funds into the IOLTA account. Respondent never maintained a separate law firm operating account or otherwise segregated client funds from funds that he used for law firm or personal purposes.

Even in the maintenance of the trust account, Respondent did [*sic*] keep any records indicating which clients' funds were deposited into the account, what fees were earned in service of each client or what [page 5] expenses were incurred. As far as the Special Master can tell, all client funds were combined into one general pool and, from that fund, Respondent admittedly drew numerous checks for personal purposes. For example, he withdrew funds to pay (1) personal bills; (2) purchase his personal residence in South Carolina; (3) decorate and make other improvements to that personal residence; (4) provide gifts to friends, relatives and religious institutions; and (5) pay wages of the TLA staff. Finally, Respondent also attempted to pay his annual dues and license fees to the State Bar of Georgia using a check from his IOLTA account.

Without any supporting documentation, Respondent claims that the funds paid out of his IOLTA account were earned legal fees and thus the disbursements were valid. Based on the Respondent's testimony in this proceeding, the Special Master finds Respondent's explanation unworthy of belief. Respondent used the trust account as a personal account on a continuing basis. Despite having ample opportunity to submit evidence, Respondent did not tender a single item of evidence indicating that he ever used the account for the benefit of a client.

CONCLUSIONS OF LAW

Respondent asserts that his conduct during Majors v. Featherly and TLA was mandated by some perceived legal requirement. Respondent offered no persuasive legal citation or argument in support of this assertion. This Special Master finds as a matter of law that Respondent's defense has no legal merit.

Count One of the Formal Complaint charged Respondent with a violation of Standard 4 of Bar Rule 4-102(d). Standard 4 of Bar Rule 4-102(d) states, in pertinent part, that, "A lawyer shall not engage in professional conduct involving dishonesty, fraud, deceit or willful misrepresentation." [page 6]

This Special Master finds that (1) by acting as a Georgia resident agent for service of process for TLA in Majors v. Featherly and TLA when he was a resident of South Carolina, Respondent engaged in professional conduct involving deceit and willful misrepresentation; (2) by acting as registered agent for service or [*sic*] process for TLA of the complaint filed in Majors v. Featherly and TLA when he was the opposing party, Respondent engaged in professional conduct involving deceit and willful misrepresentation, and (3) by holding himself out as counsel for TLA in Majors v. TLA [*sic*] when he was the opposing party, Respondent engaged in professional conduct involving deceit and willful misrepresentation. This Special Master therefore concludes that Respondent violated Part IV, Chapter 1, Bar Rule 4-102(d), Standard 4 of the Bar Rules.

Count Two of the Formal Complaint charged Respondent with a violation of Standard 30 of Bar Rule 4-102(d). Standard 30 of Bar Rule 4-102(d) states, in pertinent part, that,

> Except with the written consent or written notice to his client after full disclosure a lawyer shall not accept or continue employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property or personal interests.

This Special Master finds that Respondent by holding himself out as counsel for TLA in Majors v. Featherly and TLA when he was the opposing party in that action, accepted or continued employment when the exercise of his professional judgment on behalf of his client would be or reasonably might be affected by his own financial, business, property or personal interests. This Special Master therefore concludes that Respondent violated Part IV, Chapter 1, Bar Rule 4-102(d), Standard 30 of the Bar Rules.

Count Three of the Formal Complaint charged Respondent with a violation of Standards 65(A) and 65(D) of Bar Rule 4-102(d). Standard 65(A) of Bar Rule 4-102(d) states, in [page 7] pertinent part, that, "A lawyer shall not commingle his client's funds with his own, and shall not fail to account for trust property, including money and interest paid on the client's money, if any, held in any fiduciary capacity."

Standard 65(D) of Bar Rule 4-102(d) states, in pertinent part, that,

> Every lawyer who practices law in Georgia, whether said lawyer practices as a sole practitioner, or as a member of a firm, association, or professional corporation, and who receives money or property on behalf of a client or in any other fiduciary capacity, shall maintain or have available a trust account as required by Standards 65.1 and 65.2. All funds held by a lawyer for a client and all funds held by a lawyer in any other fiduciary capacity shall be deposited in and administered from such account. No personal funds of a lawyer shall ever be deposited in a trust account, except (1) unearned attorney's fees held until earned, and (2) sufficient funds held to cover maintenance fees such as service charges on the account. Records on such trust accounts shall be so kept and maintained as to reflect at all times the exact balance held for each client or other fiduciary. No funds shall be withdrawn from such trust account for the personal use of the lawyer maintaining the account except earned attorney's fees debited against the account of a specific client and recorded as such.

This Special Master finds that Respondent (1) commingled client funds with his own; (2) withdrew funds from the IOLTA trust account for his personal use; and (3) failed to kept and maintain trust account records which at all times the [*sic*] reflected exact balance held for each client or other fiduciary and

accounted for all disbursements.[3] This Special Master therefore concludes that Respondent violated Part IV, Chapter 1, Bar Rule 4-102(d), Standard 65 of the Bar Rules. [page 8]

RECOMMENDATION OF DISCIPLINE AGGRAVATION AND MITIGATION

One of the duties of this Special Master, pursuant to Bar Rule 4-217(a)(3), is to enter a recommendation of discipline. In light of that duty, a reflection on the purpose of attorney discipline is appropriate.

A disciplinary proceeding is an inquiry into the fitness of a member of the Bar and is designed to protect the public from improprieties that injure the public's trust in the attorney-client relationship. In the Matter of Haupt, 250 Ga. 422, 297 S.E.2d 284 (1982). The Court has repeatedly stated that the purpose of a disciplinary proceeding is to protect the public. In the

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[3] The State Bar of Georgia did not allege or prove that any client lost money as a result of the actions of the Respondent. The very limited records maintained by Respondent, however, provide absolutely no way to determine that question -- one way or the other. Respondent's record keeping practices create a significant risk that client funds will be lost or might not be replaced. This total lack of accountability is a risk to which no client funds should be subjected, certainly not without express client approval to such an unusual arrangement.

Matter of Klepak, 250 Ga. 892, 302 S.E.2d 356 (1983). The goals of disciplinary action include imposition of an appropriate sanction, deterrence to others and demonstration to the public that the ethics of the profession will be maintained. In the Matter of Thomas L. Washburn, III, 266 Ga. 50 at 52, 464 S.E.2d 192 (1995); In the Matter of Dowdy, 247 Ga. 488 at 493(4), 277 S.E.2d 36 (1981).

The Supreme Court of Georgia has adopted the definition of moral turpitude set forth in the American Bar Association's Standards for Imposing Lawyer Sanctions (hereinafter referred to as the "ABA Standards"). See In the Matter of Jack O. Morse, 265 Ga. 353(2), 456 S.E.2d 52 (1995).

ABA Standard 6.11 states that,

> Disbarment is generally appropriate when a lawyer, with the intent to deceive a court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes potentially significant adverse effect on the legal proceeding. [page 9]

Based on Respondent's actions in Major [*sic*] v. Featherly and TLA, this Special Master finds that Respondent acted deceitfully and made willful misrepresentations of fact and further finds that ABA Standard 6.11 applies to the instant proceeding.

ABA Standard 4.31(a) states that,

> Disbarment is generally appropriate when a lawyer, without the informed consent of the client, engages in representation of a client knowing that the lawyer's interest [sic] are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client.

As previously noted, prior to filing the complaint in Major [*sic*] v. Featherly and TLA, Respondent did not provide written notice or secure written consent from TLA to bring the action. Respondent claims that he could not secure such consent due to the corporate deadlock between himself and Ms. Featherly. This deadlock, however, provided compelling justification not to name TLA as a defendant but rather to secure an order from the court maintaining the status quo as to TLA until a final ruling could be issued. Respondent, however, chose to pursue a unilateral course of action calculated to deny TLA independent counsel and to deter Ms. Featherly from effectively asserting her claims and defenses. This conduct could have inflicted serious damage to TLA and to Ms. Featherly. This Special Master finds that ABA Standard 4.341(a)(1) applies to the instant proceeding.

The State Bar of Georgia concedes that the evidentiary record of this proceeding contained no evidence of conversion of client or fiduciary funds. This Special Master concurs with this assessment. However, as previously stated above, there is evidence Respondent engaged in significant commingling of personal funds with client and fiduciary funds.

ABA Standard 4.12 states that, [page 10]

> Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

Respondent withdrew funds from the IOLTA account on a regular basis. He disbursed these funds for his personal use and benefit. He did not maintain trust account records in a manner that would permit one readily to ascertain the exact balance held for each client or other fiduciary. In truth, Respondent maintained no contemporaneous records of the IOLTA account other than a general bank statement noting deposits and check withdrawals. If Respondents' withdrawals were for earned fees or client related expenses, there is only his word to depend upon. To some extent, Respondent attempts to claim ignorance about the details of handling client funds when engaged in the practice of law. Ignorance surely is not excuse for what Respondent has done and failed to do. Respondent's conduct threatened his clients with potentially serious injury. Accordingly, this Special Master finds that ABA Standard 4.12 applies to the instant proceeding.

Finally, the record in this proceedings shows that Respondent engaged in a pattern of misconduct. ABA Standard 9.22(c) and 9.22(d). Respondent does not appear to appreciate the wrongful nature of his conduct or the threat to the public that would exist if bar standards are not scrupulously observed. ABA Standard 9.22(g).

RECOMMENDATION OF DISCIPLINE

For the reasons stated above, this Special Master recommends that the Supreme Court enter an order that Ned Barrie Majors, State Bar No. 466845, be subject to an order of disbarment, as defined by Bar Rule 4-102(b)(1), and that the name of Ned Barrie Majors, State [page 11] Bar No. 466845, be removed from the role of individuals licensed to practice law in the State of Georgia, pursuant to said order.

This 29th day of August, 2002.

/s/ Albert M. Pearson, III
ALBERT M. PEARSON, III
Special Master

Moraitakis, Kushel & Pearson
3445 Peachtree Road, N.E.
Suite 425
Atlanta, GA 30326
(404) 261-0016

IN THE SUPREME COURT
STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS

IN THE MATTER OF:	)	SUPREME COURT
	)	DOCKET NO. S00Y1470
NED BARRIE MAJORS:	)	STATE DISCIPLINARY
	)	BOARD DOCKET NO. 3988
State Bar No. 466845	)	OGC File No. 990191
Respondent	)	

ORDER

This matter is before the Special Master on Respondent's Motion for New Trial (New Evidentiary Hearing) and Motion to Withdraw Admissions. The Bar opposes on the ground that the Special Master lacks jurisdiction to consider them. For the reasons set forth below, both motions are denied.

Bar Rule 4-210 sets forth the powers and duties of a special master. The pertinent provisions authorize a special master to preside over evidentiary hearings, to decide questions of law and fact and to submit those findings to the Review Panel. Rule 4-210 makes no reference to post-hearing responsibilities on the part of the special master.

In the same vein, Bar Rue 4-213 delineates certain requirements for the evidentiary hearing. First, when the evidentiary hearing is complete, "the special master shall proceed to make findings of fact and conclusions of law and file a report with the Review

Panel as hereinafter provided." This language suggests that the special master has no authority to entertain post-trial motions such as the Respondent's. Second, it also states, "[t]here shall be no direct appeal from [page 2] such proceedings of the special master." This language suggests that the role of the special master is advisory to the Review Panel. So understood, it appears to vest authority in the Review Panel to rule on any post-trial motions, such as a motion for new trial.[4]

Finally, State Bar Rule 4-218 reinforces the view of the special master's role as advisory. It characterizes the document forwarded by a special master to the Review Panel as a "report." It goes on to say that the report has no legally binding effect on the Review Panel. Indeed, this report does not and cannot have any legal effect on anyone until the Review Panel has reviewed the report and made a recommendation to the Supreme Court. Subsection (a) specifically states that the Review Panel may reverse the Special Master on the basis of the record submitted to the panel. The Review Panel may even conduct a de novo hearing if such a procedure appears to be the most efficient way to proceed. Finally, subsection (d) states that the Review Panel has the authority to "grant rehearings, or new trials, for such reasons, in such manner, on such issues and within such times as the ends of justice may require." In sum, the authority to rule on the

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[4] [Footnote 1:] Respondent also asks the Special Master to permit him to withdraw multiple admissions that he made in connection with the defense of the charges against him.

Respondent's post-trial motions appears to lie with the Review Panel and not with the Special Master.

The Review Panel clearly has the authority to pass upon both of the Respondent's motions and to grant any and all relief that the Respondent seeks. The Review Panel also has the authority to direct the Special Master to act upon both motions and to take any other action that the Review Panel believes to be [page 3] appropriate. In such an event, the Special Master will faithfully follow the directives of the Review Panel. But, absent clear authority conferring jurisdiction on the Special Master to decide the pending motions, those motions are denied.

So ordered this 4th day of November, 2002.

/s/ Albert M. Pearson, III
Albert M. Pearson, III
Special Master

Filed: March 28, 2003

IN THE SUPREME COURT
STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS

IN THE MATTER OF:	)	SUPREME COURT
	)	DOCKET NO. S00Y1470
NED BARRIE MAJORS,	)	STATE DISCIPLINARY
	)	BOARD DOCKET
	)	NO.: 3988
State Bar No.: 466845,	)	OGC File No.: 990191
Respondent.	)	

REPORT OF THE REVIEW PANEL OF THE
STATE DISCIPLINARY BOARD

NOW COMES the Review Panel of the State Disciplinary Board and files its report in the above-captioned matter, pursuant to Bar Rule 4-218.

Before the Review Panel is the Special Master's Report and Recommendation filed on August 30, 2002, in which the Special Master recommended that the Respondent, Ned Barrie Majors, be subject to an order of disbarment, as defined by Bar Rule 4-102(b)(1). Also before the Review Panel are the Respondent's Motion for New Trial and Motion to Withdraw Admissions. For the reasons set forth below, the Panel recommends that the Respondent's Motion for New Trial be DENIED and recommends that the Respondent's Motion to Withdraw Admissions be DENIED. Further, the Review Panel recommends adoption of certain

findings of fact, as set forth below, and recommends adoption of conclusions of law that the Respondent did not violate Standard 4 of Bar Rule 4-102(d) and that the Respondent violated Standard 30 of Bar Rule 4-102(d) and Standard 65(A) and (D) of Bar Rule 4-[page 2] 102(d). For the reasons set forth more fully herein, the Panel recommends that the Respondent be subject to an order of disbarment, as defined by Bar Rule 4-102(b)(1).

MOTION FOR NEW TRIAL

The Respondent has filed a Motion for New Trial. In his Motion, the Respondent contends:

(a) The findings of fact and conclusions of law of the Special Master are contrary to the evidence and principles of justice and equity;

(b) The findings of fact and conclusions of law of the Special Master are decidedly and strongly against the weight of the evidence even though there may appear to be some slight evidence in favor of the findings;

(c) The findings of fact and conclusions of law of the Special Master are based in part on material evidence that was improperly admitted and also on material evidence that was improperly withheld from the Special Master over the objection of the Respondent; and

(d) The findings and recommendations of the Special Master are otherwise infirm.

The Panel carefully considered the Respondent's

Motion, and by a vote of 9-0, recommends that the Respondent's Motion for New Trial be DENIED.

MOTION TO WITHDRAW ADMISSIONS

The Respondent has filed a Motion to Withdraw Admissions made during the proceedings before the Special Master. In his Motion, the Respondent contends that numerous matters admitted in the Respondent's Prelude to Answer, Answer to Formal Complaint, Response to State Bar's First Request for Admission of Matters and Genuineness of Documents and Response to Supplement to State Bar's First [page 3] Request for Admission of Matters and of Genuineness of Documents and certain admissions made during the evidentiary hearing held on July 11, 2002 should be withdrawn. The Panel has carefully considered the Respondent's Motion, and by a vote of 9-0, recommends that the Respondent's Motion to Withdraw Admissions be DENIED.

REPORT AND RECOMMENDATION
OF THE SPECIAL MASTER

Upon careful consideration of the Special Master's Report and Recommendation, the Panel recommends adoption of the following findings of fact, conclusions of law and recommendation of discipline.

Findings of Fact

By a vote of 9-0, the Panels [sic] adopts the following findings of fact, as amended from the

findings of fact contained in the Special Master's Report and Recommendation:

The Respondent is Ned Barrie Majors, State Bar No. 466845 (hereinafter "Respondent"). Respondent is a resident of the State of South Carolina. Respondent is licensed to practice law in the State of Georgia and has been a member of the State Bar of Georgia since 1993. Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Georgia, the State Disciplinary Board of the State Bar of Georgia, and of a Special Master properly designated by the Supreme Court of Georgia.

During 1992, Respondent created, or caused the incorporation of an entity known as Tax Lien Acquisitions, Inc. in Georgia (hereinafter referred to a "TLA"). Prior to December 7, 1998, and at all times relevant to this proceeding, Respondent held approximately half of TLA's stock.

At all times relevant to this proceedings, Respondent held one or more of TLA's corporate offices. This included acting as Registered Agent for TLA and serving as Chief Legal Counsel for TLA, subsequent [page 4] to his admission to the State Bar of Georgia. Respondent subsequently held himself out as legal counsel for TLA until TLA was placed in receivership, pursuant to a court order.

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Acquisitions, Inc. (hereinafter referred to as "Majors v. Featherly and TLA"). Majors v. Featherly and TLA was a Complaint for Equitable Distribution.

O.C.G.A. 14-2-501(2)(A) requires that an individual who acts as a registered agent for a corporation must be, "An individual who resides in this state and whose business is identical with the registered office." The complaint filed in Majors v. Featherly and TLA listed Respondent's address as, 836 Howard Parkway, Myrtle Beach, SC 29577. Nevertheless, on or about December 11, 1998, Respondent signed an Acknowledgment of Service in this case as Registered Agent for TLA, an opposing party. The Acknowledgment of Service by Registered Agent for TLA listed Respondent's address as "Tax Lien Acquisitions, Inc., 205 Market Place, Suite 205, Roswell, Ga. 30075." In spite of personally being an adverse party to TLA in this litigation, on one or more occasions Respondent held himself out as legal counsel for TLA. Based on this representation, Respondent filed two motions seeking to disqualify Clifford Hardwick from representing TLA in the litigation and seeking to have his answer on behalf of TLA stricken.[5]

Respondent personally served the complaint on Ms. Featherly, his partner in Tax Lien Acquisitions, Inc., and it appears that he sought the equitable

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It was unquestionably false in representing Respondent's residence to be Roswell, Georgia, when Respondent then resided in South Carolina. By naming TLA as an adverse party in this action and then purporting to represent TLA as its chief legal counsel, Respondent was acting under a conflict of interest. He used this status to position himself to make representations to the Court on behalf of himself and TLA. The fact that Ms. Featherly ultimately secured separate counsel and defended herself in this litigation is immaterial. From this record, it is evident that Respondent did not act as counsel for TLA in the foregoing litigation with Ms. Featherly's knowledge or written consent. Nor did Respondent give written notice to TLA or Ms. Featherly that his own financial, business, property or personal interests might adversely affect the exercise of his professional judgment on behalf of TLA.

Subsequent to his 1993 admission to practice law in the State of Georgia, Respondent opened and maintained an IOLTA account with First Union National Bank. Respondent called the IOLTA account the "Attorney Ned Majors Trust FBO Tax Liens." On numerous occasions, Respondent deposited client fiduciary funds into the IOLTA account. Respondent

never maintained a separate law firm operating account or otherwise segregated client funds from funds that he used for law firm or personal purposes. Even in the maintenance of the trust account, Respondent did not kept sufficient records indicating which clients' funds were deposited into the account, what fees were earned in service of each client or what expenses were incurred. All client funds were combined into one general pool and, from that fund, Respondent admittedly drew numerous checks for personal purposes. For example, he withdrew funds [page 6] to pay (1) personal bills; (2) purchase his personal residence in South Carolina; (3) decorate and make other improvements to that personal residence; (4) provide gifts to friends, relatives and religious institutions; and (5) pay wages of the TLA staff. Finally, Respondent also attempted to pay his annual dues and license fees to the State Bar of Georgia using a check from his IOLTA account.

Respondent claims that the funds paid out of his IOLTA account were earned legal fees and thus the disbursements were valid. Based on the Respondent's testimony in this proceeding, the Special Master found Respondent's explanation unworthy of belief. Respondent used the trust account as a personal account on a continuing basis. Despite having ample opportunity to submit evidence, Respondent did not tender a single item of evidence indicating that he ever used the account for the benefit of a client.

Conclusions of Law

In the Special Master's Report and Recommendation, the Special Master concluded that the Respondent violated Standard 4, Standard 30 and Standard 65(A) and (D) of Bar Rule 4-102(d). Upon careful consideration of the Special Master's Report and Recommendation and the entire record in this case, the Panel recommends the following conclusions of law.

1.) Standard 4

Standard 4 states, in pertinent part, "A lawyer shall not engage in professional conduct involving dishonesty, fraud, deceit or willful misrepresentation." Finding no clear and convincing evidence of a violation of Standard 4 as required by Bar Rule 4-221(e)(2), the Panel concludes, by a vote of 9-0, that the State Bar has not proven a violation of Standard 4.

2.) Standard 30

Standard 30 of Bar Rule 4-102(d) states, in pertinent part: [page 7]

> Except with the written consent or written notice to his client after full disclosure, a lawyer shall not accept or continue employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property or personal interests.

Upon consideration of the findings of fact set forth above and the provisions of Standard 30, the Panel concludes, by a vote of 9-0, that the Respondent violated Standard 30.

3.) Standard 65(A) and (D)

Standard 65(A) of Bar Rule 4-102(d) states, in pertinent part, "A lawyer shall not commingle his client's funds with his own, and shall not fail to account for trust property, including money and interest paid on the client's money, if, held in any fiduciary capacity." Standard 65(D) of Bar Rule 4-102(d) states, in pertinent part:

> Every lawyer who practices law in Georgia, whether said lawyer practices as a sole practitioner, or as a member of a firm, association, or professional corporation, and who receives money or property on behalf of a client or in any other fiduciary capacity, shall maintain or have available a trust account as required by Standards 65.1 and 65.2. All funds held by a lawyer for a client and all funds held by a lawyer in any other fiduciary capacity shall be deposited in and administered from such account. No personal funds of a lawyer shall ever be deposited in a trust account, except (1) unearned attorney's fees held until earned, and (2) sufficient funds held to cover maintenance fees such as service charges on the account. Records on such trust accounts shall be so kept and maintained as to reflect at all times the exact balance held for each client or other fiduciary.

> No funds shall be withdrawn from such trust account for the personal use of the lawyer maintaining the account except earned attorney's fees debited against the account of a specific client and recorded as such.

Upon consideration of the findings of fact set forth above and the provisions of Standard 65(A) and (D), the Panel concludes, by a vote of 9-0, that the Respondent violated the provisions of Standard 65(A) and [page 8] (D).

Recommendation of Discipline

The Panel has carefully considered the Special Master's Report and Recommendation, the entire record in this case and the exceptions filed by the Respondent. Upon this consideration and finding that aggravating factors of dishonest or selfish motive, a pattern of misconduct and substantial experience in the practice of law exist, ABA Standards for Imposing Lawyer Sanctions, Section 9.2, the Panel, by a vote of 8-1, recommends that the Supreme Court enter an Order that Ned Barrie Majors, State Bar No. 466845, be subject to an order of disbarment, as defined by Bar Rule 4-102(b)(1), and that the name of Ned Barrie Majors, State Bar No. 466845, be removed from the role of individuals licensed to practice law in the State of Georgia, pursuant to said Order.

This 26th day of March, 2003.

/s/ Sarah B. Akins
Sarah B. Akins
Chair, Review Panel
State Disciplinary Board

SUPREME COURT OF GEORGIA
Case No. S03Y1128

Atlanta, July 30, 2003

The Honorable Supreme Court met pursuant to adjournment. The following order was passed.

IN THE MATTER OF NED BARRIE MAJORS

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Sherie M. Welch, Clerk

[Seal] Supreme Court of Georgia
Case No. S03Y1128

Atlanta September 5, 2003

The Honorable Supreme Court met pursuant to adjournment. The following order was passed.

IN THE MATTER OF NED BARRIE MAJORS

Upon consideration of the Motion for Leave to File Second Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

[Seal] Supreme Court of the State of Georgia
Clerk's Office, Atlanta

I certify that the above is a true extract from the Minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Lynne M. Stinchcombe, Chief Deputy Clerk

CONSTITUTIONAL PROVISIONS INVOLVED

Article I, Section 8:

The Congress shall have Power *** To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes *** To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article IV, Section 2:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. ***

Fourteenth Amendment, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

GEORGIA SUPREME COURT RULES FOR STATE BAR OF GEORGIA THAT ARE INVOLVED

Standard 4.

A lawyer shall not engage in professional conduct involving dishonesty, fraud, deceit, or willful misrepresentation. A violation of this standard may be punished by disbarment.

Standard 22.

Withdrawal in general:

(a) if permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(b) In any event a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled and complying with applicable laws and rules.

A violation of this standard may be punished by a public reprimand.

Standard 23.

A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned. A violation of this standard may be punished by a public reprimand.

Standard 25.

A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction. A violation of this standard may be punished by a public reprimand.

Standard 30.

Except with the written consent or written notice to his client after full disclosure a lawyer shall not accept or continue employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property or personal interests. A violation of this standard may be punished by disbarment.

Standard 33.

A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client unless the client has consented after full disclosure. A violation of this standard may be punished by a public reprimand.

Standard 40.

Except with the consent of his client after full disclosure, a lawyer shall not:

(a) accept compensation for his legal services from one other than his client or the client's representative;

(b) accept from one other than his client or the client's representative anything of value related to his representation of or his employment by his client.

A violation of this standard may be punished by disbarment.

Standard 44.

A lawyer shall not without just cause to the detriment of his client in effect wilfully [*sic*] abandon or wilfully [*sic*] disregard a legal matter entrusted to him. A violation of this standard may be punished by disbarment.

Standard 61.

A lawyer shall promptly notify a client of the receipt of his funds, securities or other properties and shall promptly deliver such funds, securities or other properties to the client. A violation of this standard may be punished by disbarment.

Standard 63.

A lawyer shall maintain complete records of all funds, securities, and other properties of a client

coming into the possession of the lawyer and promptly render appropriate accounts to his client regarding them. A violation of this standard may be punished by disbarment.

Standard 65.

(A) A lawyer shall not commingle his client's funds with his own, and shall not fail to account for trust property, including money and interest paid on the client's money, if any, held in any fiduciary capacity.

(B) No later than July 1, 1991 (unless a lawyer has elected to exempt some or all of his accounts as provided in subparagraph (C) below), all client's funds shall be placed in either an interest-bearing account with the interest being paid to the client or an interest-bearing (IOLTA) account with the interest being paid to the Georgia Bar Foundation as hereinafter provided.

(1) With respect to funds which are not nominal in amount, or are not to be held for a short period of time, a lawyer shall, with or without notice to his clients, create and maintain an interest-bearing account with any bank, credit union or savings and loan association which is authorized by federal or state law to do business in Georgia and which is federally insured, with the interest to be paid to the client. No earnings from such

an account shall be made available to a lawyer or law firm.

(2) With respect to funds which are nominal in amount or are to be held for a short period of time, a lawyer shall, with or without notice to the client, create and maintain an interest-bearing, government insured trust account (IOLTA) in compliance with the following provisions:

(a) No earning from such an IOLTA account shall be made available to a lawyer or law firm;

(b) The account shall include all clients' fund [*sic*] which are nominal in amount or which are to be held for a short period of time;

(c) An interest-bearing trust account may be established with any bank, credit union or savings and loan association authorized by federal or state law to do business in Georgia and federally insured. Funds in each interest-bearing trust account shall be subject to withdrawal upon request and without delay.

(d) The rate of interest payable to any interest-bearing trust account shall not be less than the rate paid by the depositor institution to regular, non-lawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of

certificates of deposit, may be obtained by a lawyer or law firm on some or all of the deposit funds so long as there is no impairment of the right to withdraw or transfer principal immediately.

(e) Lawyers of law firms shall direct the depository institution:

(i) to remit to the Georgia Bar Foundation interest or dividends, net of any charges or fees on that account, on the average monthly balance in that account, or as otherwise computed in accordance with a financial institution's standard accounting practice, at least quarterly. Any bank fees or charges in excess of the interest earned on that account for any month shall be paid by the lawyer or law firm in whose names such account appear, if required by the bank;

(ii) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, the average monthly balance against which the interest rate is applied, the service charges or fees applied, and the net interest remittance;

(iii) to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, the average account balance of the period for which the report is made, and such

other information provided to non-lawyer customers with similar accounts.

(3) No charge of ethical impropriety or other breach of professional conduct shall attend the determination that such funds are nominal in amount or to be held for a short period of time, or to the decision to invest clients' funds in a pooled interested-bearing account.

(4) Whether the funds are designated short-term or nominal or not, a lawyer or law firm may elect to remit all interest earned or interest earned net of charges, to his client or clients.

(C) If an election not to participate in the program is submitted in accordance with the procedure set forth in this paragraph, a lawyer may elect not to maintain some or all of his escrow accounts in accordance with paragraph (B) of this rule until July 1, 1991. The lawyer must prior to July 1, 1990, make such election on a Notice of Election form provided by the Georgia Bar Foundation. A lawyer admitted into the Georgia Bar after July 1, 1990, but prior to July 1, 1991, who elects not to maintain such an account shall submit an appropriate Notice of Election within thirty days after admission into the Bar. If a Notice of Election is not submitted within the applicable time, the lawyer shall be required to maintain the account(s) described in paragraph (b) of this standard no later than July 1, 1990.

This subparagraph (C) shall become null and void on July 1, 1991.

(D) Every lawyer who practices law in Georgia, whether said lawyer practices as a sole practitioner, or as a member of a firm, association, or professional corporation, and who receives money or property on behalf of a client or in any other fiduciary capacity, shall maintain or have available a trust account as required by Standards 65.1 and 65.2. All funds held by a lawyer for a client and all funds held by a lawyer in any other fiduciary capacity shall be deposited in and administered from such account. No personal funds of a lawyer shall ever be deposited in a trust account, except (1) unearned attorney's fees held until earned, and (2) sufficient funds held to cover maintenance fees such as service charges on the account. Records on such trust accounts shall be so kept and maintained as to reflect at all times the exact balance held for each client or other fiduciary. No funds shall be withdrawn from such trust account for the personal use of the lawyer maintaining the account except earned attorney's fees debited against the account of a specific client and recorded as such.

A violation of paragraphs (A) or (D) of this standard may be punished by disbarment and a violation of paragraphs (B) or (C) of this standard may be punished by public reprimand.

Standard 65.1. Required Bank Accounts.

Every lawyer who practices law in Georgia and who receives money or other property on behalf of a client or in any other fiduciary capacity shall maintain, in an approved financial institution in Georgia as defined in Standard 65.3(a), in the name of the lawyer or law firm, a trust account or accounts, separate from any business and personal accounts, into which funds received by the lawyer on behalf of a client or in any other fiduciary capacity shall be deposited.

A violation of this standard may be punished by disbarment.

Standard 65.2. Description of Accounts.

(a) A lawyer shall designate all trust accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, as either an "Attorney Trust Account," "Attorney Escrow Account" or "Attorney Fiduciary Account."

(b) A lawyer shall designate all business accounts, as well as all deposit slips and all checks drawn thereon, as a "Business Account," a "Professional Account," an "Office Account," a "General Account," a Payroll Account" or a "Regular Account."

(c) Nothing in this Standard shall prohibit a lawyer from using any additional description or designation for a specific business or trust account including fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, agent or in any

other fiduciary capacity. A violation of this standard may be punished by public reprimand.

Standard 65.3.

(a) Approved Institutions ***
(b) Timing of Reports ***